

**Present:**

Mr. Justice Md. Salim

**CRIMINAL APPEAL NO.713 OF 2025**

Md. Hamidur Rahman

.....Appellant.

-Versus-

The State and Anti-Corruption Commission

.....Respondents.

Mr. A.K.M. Azad Hossain, Advocate

----- For the appellant

Mr. Bivuti Tarofder, Advocate

.....For the Anti-Corruption Commission.

Ms. Syeda Shajia Sharmin, D.A.G. with

Mr. Md. Rejaul Islam, A.A.G.

Mr. Khan Mahfuzun Noor, A.A.G.

----- For the State.

**Heard on 06.01.2026, 14.01.2026,  
21.01.2026, 27.01.2026, 28.01.2026  
and 19.02.2026.**

**Judgment on 26.02.2026.**

This appeal is directed against the judgment and order of conviction and sentence dated 21.11.2024 passed by the learned Special Judge, Cumilla in Special Case No.01 of 2024 (Previously Special Case No.06 of 2019) arising out of G.R. No.47 of 2011 corresponding to Brahmanbaria Police Station Case No.35 dated 11.05.2011 convicting the appellant under Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing

him to suffer rigorous imprisonment for 1(one) year with a fine of Tk.27,000/-.

The prosecution case, in brief, is that P.W. 1, Mr. Modabbir Hossain, Post-Office Inspector, Brahmanbaria Sub-division, Brahmanbaria, on 11.05.2011, as an informant, lodged a First Information Report with the Brahmanbaria Police Station, contending, inter alia, that the accused, Md. Hamidur Rahman, who at the relevant time was the Treasurer of Brahmanbaria Head Post Office, during his tenure on 17.04.2011, supplied a bundle of revenue stamps valued at Tk. 15,000/- through "SO Slep" to the Kasba Upazilla Post Office, and the Kasba Upazilla Post Office received them on 18.04.2011. On 21.04.2011, among those, the Upazilla Post Master sold revenue stamps valued at Tk. 500/- to one employee of Sonali Bank, Kasba Branch, named Basir Miah, which, upon verification, was found to be forged. During the departmental inquiry, revenue stamps valued at Tk. 4400/- were sold, and the remaining revenue stamps, valued at Tk. 10,600/- in the stock were found to be forged by scanning the detecting machine, thereby proving that the accused Hamidur Rahman supplied forged

revenue stamps valued at Tk. 15,000/- to the Kasba Upazila post office. Next, on 18.04.2011, the accused Hamidur Rahman supplied, through 'SO' slips in account bags, revenue stamps valued at Tk. 5,000/- to Pattan Sub-Post Office, and on receipt thereof on 20.04.2011, revenue stamps valued at Tk.1,500/- were sold. During the inquiry, the balance revenue stamps on stock valued at Tk. 3,500/- were found to be counterfeit by scanning a detection machine. In this way, on 18.04.2011, revenue stamps valued at Tk. 2,000/- supplied to Gangasagar Sub Post Office were found to be forged. On 18.04.2011, revenue stamps valued at Tk.5,000/- were supplied to Kutty Sub Post Office, out of which of Tk. 4,600 revenue stamps were sold on different dates, and the remaining 400 revenue stamps were found to be counterfeit. Moreover, during the departmental inquiry, it was also found that the accused alone supplied forged revenue stamps valued at Tk. 2,000/- (taka two thousand) to Gangasagar Sub Post Office and revenue stamps valued at Tk. 5,000/- to the Kutty Sub Post Office.

The Anti-Corruption Commission, shortly the Commission, investigated the case and, having found

prima facie evidence, submitted the charge sheet on 27.08.2014 against the accused-appellant under Section 409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. Being ready, the case was transferred to the Sessions Judge, Cumilla, where it was registered as Special Case No. 01 of 2024.

Subsequently, the learned Special Judge, Brahmanbaria, by the order dated 19.11.2020, framed a charge against the appellant under Section 258/409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, which was read over and explained to the accused appellant when he pleaded his innocence and claimed to be tried.

In order to bring home the charge, the prosecution examined as many as 14 witnesses, while the defense examined none.

After the evidence was closed, the accused appellant was present in the dock, duly examined under section 342 of the Code of Criminal Procedure, and again claimed his innocence.

The defense case arose from the trend of cross-examination of the prosecution witnesses, which

established that the accused appellant is innocent, and this case has been initiated against him for victimization by his vested quarter.

After the conclusion of the trial, the learned special judge, Cumilla, found the accused-appellant guilty under Section 5(2) of the Prevention of Corruption Act, 1947, and sentenced him to suffer rigorous imprisonment for 1 (one) year, with a fine of Tk. 27,000/-.

Being aggrieved by and dissatisfied with the above judgment and order of conviction and sentence, the present appeal has been preferred by the appellant.

Mr. A.K.M. Azad Hossain, the learned counsel appearing on behalf of the appellant, submits that the learned Special Judge did not make any specific finding based on material evidence on record, nor discussed anything as to the involvement of the appellant with the alleged offence, and the prosecution has failed to prove their case against him beyond a reasonable doubt; it is an essential condition that property which is subject matter of the offence must have been entrusted to a person. The term entrustment or dominion over the property implies handing over that property for some purpose. The word

entrustment conveys that the person handing over the property must have confidence in the person receiving it, thereby creating a fiduciary relationship between them. So, proof of the accused's entrustment of property or dominion over the property is a prerequisite to establishing the charge of criminal misappropriation; rather, the trial court failed to consider that entrustment is not upon the appellant and that the DC office delivered the revenue stamps. There is nothing to show whether the revenue stamps received from the DC office are genuine, as there is no report, and the appellant has only delivered them to sub-post offices; hence, dominion has shifted to the postmaster of the sub-post offices.

On the contrary, Mr. Bivuti Tarofder, the learned counsel for the respondent No. 2-ACC, contends that the prosecution has well proved the allegations brought against the accused-appellant in the instant case. Therefore, he contends that, in all fairness, this appeal should be dismissed.

Ms. Syeda Shajia Sharmin, learned Deputy Attorney General for the state, adopted the contention so made by the learned counsel for the respondent No.2, ACC.

We have considered the submissions of the learned counsel for both parties and have perused the impugned judgment, the evidence, and other materials on record. It appears that the prosecution, to prove its case, examined as many as 14 witnesses. Of them-

P.W.1- Md. Modabbir Hossain, at the relevant time, was Inspector of the Brahmanbaria Head Post Office, as the informant deposed that the accused, Md. Hamidur Rahman, who at the relevant time was the Treasurer of Brahmanbaria Head Post Office, during his tenure on 17.04.2011, supplied a bundle of revenue stamps through "SO Slep" valued at Tk. 15,000/- to the Kasba Upazilla Post Office, which received them on 18.04.2011. On 21.04.2011, among those, the Upazilla Post Master sold revenue stamps valued at Tk. 500/- to one employee of Sonali Bank, Kasba Branch, named Basir Miah, which, upon verification, was found to be forged. During the departmental inquiry into the alleged occurrence of revenue stamps, valued at Tk.4400/- were sold, and the remaining revenue stamps, valued at Tk.10,600/- in the stock were found to be forged by scanning the detecting machine, thereby proving that the revenue stamps were

valued at Tk.15,000/- supplied by the accused Hamidur Rahman to the Kasba Upazila post office were forged. Next, on 18.04.2011, the accused Hamidur Rahman supplied, through 'SO' slips in account bags, revenue stamps, valued at Tk. 5,000/-, to Pattan Sub-Post Office, and, on receipt thereof on 20.04.2011, revenue stamps, valued at Tk. 1,500/-, were sold. During the inquiry, the balance revenue stamps on stock, valued at Tk. 3500/- were found to be counterfeit by scanning a detecting machine. In this way, on 18.04.2011, revenue stamps, valued at Tk. 2,000/-supplied to Gangasagar Sub Post Office was found to be forged. On 18.04.2011, revenue stamps, valued at Tk. 5,000/-were supplied to Kutu Sub Post Office, out of which the stamps, valued at Tk. 4,600/- were sold on different dates, and the remaining revenue stamps, valued at Tk. 400/- were found to be counterfeit. Moreover, during the departmental inquiry, it was also found that the accused alone supplied forged revenue stamps, valued at Tk. 2,000/- (taka two thousand), to the Gangasagar Sub Post Office and forged revenue stamps, valued at Tk. 5,000/-, to the Kutu Sub Post Office. He

then stated that DPMG Cumilla formed a three-member inquiry committee, of which he was the president.

During cross-examination, this witness stated that he was not present at the examination of the forged stamps. His signature was not taken when the forged stamps were examined in Brahamanbaria.

PW.2- K.M. Abul Kalam Azad, Additional Post Master General, deposed that the accused Hamidur Rahman, who, at the relevant time, was the Treasurer, sent counterfeit revenue stamps valued at Tk. 15,000/- to the Kasba Sub-Post Office. The treasure also sent counterfeit revenue stamps valued at Tk. 10,000/- to the Kuti, Bangura, and Patten Sub-Post Office on 17.04.2011, and on 18.04.2011, supplied valuet at Tk. 5,000/- counterfeit revenue stamps to the Kuti Sub-post Office. In this way, the accused Hamidul sent a total of Tk. 30,000/- counterfeit revenue stamps to various sub-post offices. The revenue stamps were recovered and, after examination by the scanner, were found to be forged.

During cross-examination, this witness admitted that the Postmaster and Treasurer combinedly supply revenue stamps to multiple Sub-post Offices. He denied

the suggestion that the Kasba Sub-post Office sold alleged stamps from 18.04.2011 to 21.04.011, and that Sub-Post Offices sold forged revenue stamps. They recovered the alleged forged stamps on 18.4.2011. He admitted that he was not present when the alleged stamps were supplied.

PW.3- Md. Siddik Ali, president of the departmental inquiry committee, deposed that the accused, Hamidur Rahman, was the Treasurer of the Head Post Office from 11.04.2011 to 24.04.2011. On 17.04.2011, the accused Hamidur Rahman supplied revenue stamps valued at Tk. 15,000/- to the Kasba Post Office. On 18.04.2011, those revenue stamps were sold. On 21.04.2011, a customer named Basir Mia, an employee of the Sonali Bank Kasba Branch, complained that the revenue stamps he had purchased, valued at Tk. 500/- were found to be forged. Thereafter, the alleged stamps were found to be forged upon examination with a scanner at the Kasba Upazila Sub Post Office. The accused Hamidur Rahman also supplied forged revenue stamps valued at Tk. 5,000/- to the Pattan Sub Post Office, forged revenue stamps valued at Tk. 2,000/- to the Gangasagar Post Office, and supplied forged revenue stamps valued at Tk. 5000/- to the Kutuy

Sub Post Office. Thereafter, a three-member inquiry committee was formed, of which he was the president. They found that revenue stamps were valued at Tk. 105.00/- were sold, and the rest were found to be forged after scanning. They seized the related document, forged revenue stamps, and prepared a seizure list. After the inquiry, they submitted the inquiry report. He further stated that, after inquiry, they found that on 17.04.2011, the accused Hamidur Rahman supplied revenue stamps valued at Tk. 15,000/- to the Kasba Sub Post Office, supplied forged revenue stamps valued at Tk. 5,000/- to the Pattan Sub Post Office, supplied forged revenue stamps valued at Tk. 2000/- to the Gangasagar Post Office, and supplied forged revenue stamps valued at Tk. 5000/- to the Kutty Sub Post Office without any demand issued by the concerned sub post offices. On 05.03.2012 at 4:00 PM, he handed over the seized items mentioned under item Nos. 1 to 8, column No. 5, to the I/O of the Anti-Corruption Commission, Cumilla, who seized the same and returned them to his custody.

In cross-examination, this witness admitted that the treasury of the DC Office supplies the stamps to the head

post office, and that the Post Office examines them upon receipt. The alleged forged stamps were neither recovered from the head post office nor in the possession of the accused Hamidur Rahman.

PW.4- Md. Mizanur Rahman, a seizure list witness, deposed that at the time of the occurrence, he worked at DPMG Cumilla. Counterfeit revenue stamps were being sent from the Brahmanbaria Head Post Office to the Kasba Upazila Office. The accused was the Treasurer of the Head Post Office. The investigating officer seized the documents that were related to the case. He identified the seizure list and his signature on it. On recall, this witness further stated that on 05.03.2012, in his presence, records were seized, as presented by Mr. Siddiq Ali. Forged stamps were seized. He submitted the seized records, serial Nos. 1-8, under item No. 5, to the court.

During cross-examination, this witness stated that at the relevant time of the occurrence, he was posted at Cumilla. He was present at the Anti-Corruption Commission office during the handover of the seized records. He was not present when the forged stamps were supplied. He did not seize any forged stamps.

PW.5- Reba Howlader, at the relevant time, she posted as Assistant Director, ACC SAJEKA, Cumilla, who investigated the case, deposed that he was entrusted with the case on 09.01.2012 by the Commission. She seized stamps, SO slip, revenue stamps, demand letters, an inquiry report, a notice to the accused, and other documents related to the case, and prepared a seizure list. She identified his signature in the seizure list marked as exhibit 2/3. She also recorded statements of the witnesses. However, on 28.05.2011, she submitted the final report against the accused Hamidur Rahman.

PW.6- Kazi Towhidul Islam-deposed that at the relevant time, he was working as an Inspector of Murad Nagar Sub-Division, and was a member of the inquiry committee. This witness deposed that the accused Hamidur Rahman supplied forged revenue stamps to multiple sub-post offices, including Kasba Tk. 15,000/-, Kuti Tk. 5,000/-, Pattan Tk. 5,000/-, and Gangasagar Tk. 2,000/-. He then stated that the inquiry committee seized a total of Tk. 16,500/- worth of forged stamps, which were verified using a detection machine. On recall, this witness stated that on 17.04.2011, forged revenue stamps, valued

at Tk. 15,000/- were sent to the Kasba sub-post office, and, on investigation, they seized forged revenue stamps valued at Tk. 10,600/-. Supplied forged revenue stamps, valued at Tk.5,000/-to Pattan sub-post office, Tk. 5,000/- to Kutty sub-post office, Tk. 2000/- to the Gongasagar sub-post office. They collected the counterfeit stamps detection machine and, after scanning the alleged revenue stamps, found that the revenue stamps valued at Tk. 15,000/- were forged and seized them. He identified the investigation report marked as exhibits 5-5/1

During cross-examination, this witness denied the suggestion that no forged stamps had been recovered from the Kutty, Pattan, Gangasagar, and Kasba sub-post offices.

P.W.7- Sabina Yesmin, Post Master of Kuti Sub-Post Office, deposed that the accused, Hamidur Rahman, was the Treasurer of Brahmanbaria Head Post Office, and was responsible for supplying stamps. She received Tk. 7,000/- worth of revenue stamps in a sealed condition from the accused Hamidul, after selling Tk. 4,600/- of revenue stamps, she was ordered by the authority to stop sales, and the remaining stock was seized as forged.

During cross-examination, this witness stated she did not see the FIR. She did not receive any allegation of forged stamps. She was not present during the stamp scanning at Brahmanbaria.

PW.8- Md. Alamgir, Postmaster, Gangasagar, deposed that he received Tk. 2000/- worth of revenue stamps in a sealed envelope on 18.04.2011. Those stamps were found to be forged during the inspection on 28.04.2011.

During cross-examination, this witness stated that he was not present when the stamps were examined.

PW.9- Azhar Uddin Ahmmed, Kasba Upazila Postmaster, deposed that on 21.04.2011, a customer named Basir Mia complained that the revenue stamps valued at Tk. 500/- he had purchased were found to be forged. He informed the above allegation to the DMPG Cumilla and Brahmanbaria, who ordered him to stock the revenue stamps. He then stated that on 24.04.2011, accused Hamidur Rahman approached him and admitted the situation, stating that he would replace the stamps, and explicitly requested that the matter not to be reported to higher authorities.

In cross-examination, this witness stated that stamps were not examined in his presence. He denied the suggestion that the accused did not supply the forged stamps.

PW.10- Md. Abdur Rahman, Inspector/ Post Master, deposed that he was present when the Commission examined the forged revenue stamps and sized the records. On recall, this witness further stated that ACC official Mustafa Borhanuddin seized some records from his office, prepared a seizure list, and returned the seized articles, serial Nos. Ka-Cha, under item No.5, for his custody. He identified the seizure list and his signature thereon. He also submitted the seized articles, the inquiry report, and other related documents to the court, which have been exhibited properly.

In cross-examination, this witness stated that he did not personally examine the stamps.

PW.11- Md. Monir Ahammed, constable, deposed that he was present when the seizure list of several records, forged revenue stamps, forged stamps registers, and other records was prepared. He identified the seizure list and his signature thereon.

In cross-examination, this witness stated that he put his signature as a constable at the commission office.

P.W. 12-Pear Ahammed, a sizer list witness, deposed that Mr. Abur Rahman seized the records related to the case at the Commission Office. He put his signature on the seizure list and identified it and his signature thereon.

In cross-examination, this witness stated that he does not know anything about the instant case.

P W. 13- Md. Monirul Islam stated that at the relevant time, he was posted as an Inspector in the administration of the Cumilla DPMG in 2011. He brought the departmental records to the Deputy Postmaster General at the relevant time. The Commission official, Abdur Rahman, seized some records from his office, prepared a seizure list, and returned the seized articles, i.e., item No.5 for custody. He identified his signature thereon and identified the seized articles to the court.

This witness was declined by the defense for cross-examination.

PW.14- Mostafa Borhan Uddin Ahammed, Investigation Officer, deposed that he was working at the Anti-Corruption Commission, SAJEKA, Cumilla, as

Deputy Director at the time of the occurrence. At first, the case was investigated by Reva Hawlader, Assistant Director, ACC SAJEKA, Cumilla, and a final report was submitted vide memo No.22663 dated 30.08.2012. The Commission decided to investigate the case further. Thereafter, the Commission entrusted him with the investigation on 14.11.2012. During the investigation, on 20.03.2013, he seized the records from the DPMG Cumilla, as presented by its inspector, Mr. Md. Abdur Rahman. He seized the list of seizures at serial Numbers 5(ka) to 5(cha). He identified the said seizure list and his signature thereon as Exhibit-3 and 3/1. He recorded the statements of two seizure list witnesses. After examination, he handed over the records to Inspector Abdur Rahman. He identified his signature on the seizure list marked as exhibits 4-4/1. He also recorded the statements of four witnesses under Section 161 of the Code of Criminal Procedure. Thereafter, he handed over the case record to Assistant Director Humaion Kabir, ACC Sajeka, Cumilla, due to his departmental transfer. He identified the seized records and his signature thereon.

During cross-examination, he stated that he seized the items with serial Nos. 5(ka) to 5(cha). He did not seize anything from the accused. He recorded the statement of four witnesses. He denied the suggestion that those witnesses did not say the accused person supplied the stamps. He denied the suggestion that, in their investigation, they found no evidence implicating the accused person and that the accused person is innocent.

Analyzing the above evidence in the records, it appears that the accused appellant, as the Treasurer, had primary and exclusive responsibility for the stamps, who, abusing his official capacity, used official SO Slips and Account Bags distributed revenue stamps to multiple sub-post offices. The investigation team, using detection machines to verify the authenticity of revenue stamps recovered from the Kasba, Kuti, Gangasagar, and Pattan offices, found forged stamps, valued at Tk. 16,500/-, out of a total of Tk. 27,000/-, which were supplied by the appellant through his official channel.

The appellant was admittedly the treasure of the Brahmanbaria Head Post Office at the material time of the occurrence. Admittedly, the employees of the Department

of Postal are public servants under section 21 of the Penal Code, so the appellant was a public servant at the relevant time.

Now it is to be considered whether the appellant, Md. Hamidur Rahman had any manner of entrustment, dominion, or control over the alleged revenue stamps.

To decide the issue involved against the appellant, it is necessary to peruse section 405 of the Penal Code, wherein 'Criminal breach of Trust' has been defined.

Section 405 of the Penal Code runs as follows:

"405. Criminal breach of trust-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

The first element of section 405 of the Penal Code is to be "in any manner entrusted with property, or dominion over property". Words in any manner in this context are significant. The expression 'entrusted' in section 405 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose. The entrustment may arise in any manner whatsoever. That manner may or may not involve fraudulent conduct of the accused. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment.

The term "entrustment" has also been expansively interpreted by the judiciary to serve the purpose of anti-corruption law. In this regard, in *Shom Nath -Vs- State*, 1975 Cri LJ 1122, the Allahabad High Court interpreted the term entrustment in the following words:

"A bare reading of Section 409, IPC indicates that the entrustment referred to therein has not to be construed in a strict sense according

to the provisions of the Indian Trusts Act, but it has to be given a very wide and liberal interpretation. As a matter of fact, the use of the expression 'in any manner entrusted with the property' itself indicates that the entrustment need not be strictly in accordance with the ingredients as contemplated in the Indian Trusts Act, but can be made in any other manner." (Para 5)

Applying Som Nath Puri, the court concluded:

"In my view, therefore, the entrustment of money by a person to the Post Master for opening a new Savings Bank Account would amount to 'entrustment' within the meaning of Section 409, Indian Penal Code."

The expression 'entrusted' should be used in a wide sense. In this regard, in the landmark judgment of Som Nath Puri -Vs- State of Rajasthan, AIR 1972 SC 1490, the Supreme Court of India authoritatively interpreted the expression "entrusted" as follows:

"There can be no doubt that before a public servant can be convicted of an offense under

section 5(1)(c) or under section 409, IPC, the property which is said to have been misappropriated must be entrusted to him. Section 405 merely provides that whoever, being in any manner entrusted with property or with any dominion over the property, is the first ingredient of the criminal breach of trust. The words 'in any manner' in the context are significant. The section does not provide that the entrustment of the property should be by someone, or the amount received must be the property of the person on whose behalf it is received. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner. The expression 'entrusted' in Section 409 is used in a wide sense and includes all cases in which property is

voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over." (Para 7)

The factual matrix involved a Traffic Assistant of Indian Airlines who collected trunk call charges from passengers. The accused contended that since he obtained money by cheating, there was no lawful entrustment. Rebutting this contention, the Supreme Court held that the moment the accused received money on behalf of the Corporation and issued receipts, he stood entrusted with the amount, regardless of any fraudulent intent at the time of receipt. In the Superintendent & Remembrance of Legal Affairs, West Bengal –Vs- S.K. Roy, AIR 1974 SC 794, the Supreme Court of India laid the most exhaustive analysis of entrustment in the context of public servants acting beyond their strict authority. The court held:

"In the case of an offense by a public servant punishable under Section 409 IPC, the acquisition of dominion or control over the property must also be in the capacity of a public servant.....The gravamen of the offence

is the dishonest misappropriation of the money or property which comes into the possession or under the control of a public servant who has the ostensible authority to receive it even though, technically speaking, from the point of view of the distribution of departmental duties under internal rules of an office, it may not be within the scope of his authority or duty to accept the money." (Para 12)

The court introduced the "ostensible authority" test:

"The fact that a public servant acts fraudulently in the exercise of his duties as a public servant to get dominion or control over some property will be an aggravating and not an exculpatory circumstance. The 'entrustment' results from what the person handing over money or property is made to think, understand, and believe about the purpose for which he hands over money or property to a public servant. If this takes place because of and due to the exercise of the

official authority, the requirements of Section 409 IPC are satisfied." (Para 12)

In the end, the court decided that

"To constitute an offence under Section 409 IPC, it is not required that misappropriation must necessarily take place after the creation of a legally correct entrustment or dominion over property. The entrustments may arise in 'any manner whatsoever'. That manner may or may not involve fraudulent conduct of the accused. Section 409 IPC covers dishonest misappropriation in both types of cases, that is to say, those where the receipt of property is itself fraudulent or improper, and those where the public servant misappropriates what may have been quite properly and innocently received. All that is required is what may be described as 'entrustment' or acquisition of dominion over property in the capacity of a public servant who, as a result of it, becomes charged with a duty to act in a particular way, or at least honestly." (Para 14)

Considering the above facts and circumstances, and the preponderant jurisprudence, it is established that even if a public servant acts beyond his strictly defined duties, as long as he utilizes his official position to obtain dominion over property, the entrustment is in his capacity as a public servant.

Keeping the above proposition in mind, let us decide the issue of entrustment and dominion regarding the revenue stamps with reference to the evidence on record.

P. W. No. 1 Modabbir Hossain (Brahmanbaria Post Office Inspector & member of the enquiry committee) in cross examination stated that:

"সত্যে ডাক ঘরের অধিনস্ত অন্যান্য পোস্ট অফিস সমূহে স্ট্যাম্প সরবরাহ করে আসামী সীলগালা করে।এটা আসামী হিসাবে দায়িত্ব থাকায় তাহার দায়িত্ব মূল্যবান স্ট্যাম্প সীলগালা করার।অফিসে প্রত্যেক কর্মচারীর Schedule of work আছে, দায়িত্বরত পোস্টমাষ্টার ও ট্রেজারার যৌথ সই এ স্ট্যাম্প সীলগালা করে পাঠায়।"

P.W. No. 2 KM Abdul Kalam Azad (Deputy Post Master Cumilla) in his cross examination said that, "সত্যে, পোস্টমাষ্টার ও ট্রেজারার একযোগে স্ট্যাম্প বিভিন্ন কার্যালয়ে প্রেরণ করার কথা।"

P.W. No. 3 Md. Siddik Ali (Head of the enquiry committee) also in cross examination stated that, "সত্য নয় যে, ট্রেজারার ও পোস্টমাষ্টার উভয়ের দায়িত্বে থাকে ডাকটিকেট। এটি ট্রেজারারের দায়িত্বে থাকে।সত্য নয় যে, পোস্টমাষ্টার এর স্বাক্ষরে ও রক্ষিত থাকে। আমাদের Memo of

distribution of works আছে। ডাকঘরের সকল valuables পোস্টমাস্টার ও ট্রেজারারের joint custody তে থাকে সত্য নয়। পোস্টমাস্টার সার্বিক দায়িত্ব থাকেন।

This statement is a judicial confirmation that the Treasurer (the appellant) had primary and exclusive responsibility for the stamps. This evidence establishes that the stamps were under the sole control of the appellant as Treasurer. His use of official channels (SO slips, account bags) to distribute the forged stamps further cements that he exercised this control in his capacity as a public servant, fulfilling the "ostensible authority" test from S.K. Roy's case.

Notably, Criminal Misconduct has been defined in section 5(1) of the Prevention of Corruption Act, 1947, which runs as follows:

5. Criminal Misconduct- (1) A public servant is said to commit the offense of Criminal Misconduct-

(a) .....

(b) .....

(C) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant, or allows any other person so to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains [or attempts to obtain] for himself or for any other person any valuable thing or pecuniary advantage.

In view of section 5(1)(c) of the Prevention of Corruption Act, 1947, if a public servant allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offense. [Reference: OM Prakash Gupta -Vs- State of UP, AIR 1957, SC 458]

In this particular case, it is well-founded on the record that the Treasury Stamp Stock Register (Exhibit No.2) shows a significant depletion and movement of stock between 13.04.2011 and 19.04.2011. SO Slips (Exhibit No. 2): Those slips accompanying the "Account Bags" sent to sub-offices bear the appellant's involvement in the supply chain. Moreover, those transferred are recorded in "So Slips" and transported in sealed "Account Bags". "So Slips" were signed and issued by the same person. The Departmental Inquiry Report (Exhibit No. 5) revealed that, in the daily stamp register, it is apparent that on 17.04.2011, Revenue stamps totaling Tk. 46,000/- were

sold, but only Tk. 31,000/- was recorded. On 18.04.2011, actual sales were Tk. 19,000/-, but the register incorrectly shows Tk. 14,000/-. On 19.04.2011, actual sales were Tk. 19,000/-, but the amount was again under-reported as Tk. 14,000/-. The prosecution has established misappropriation through documentary evidence and the inquiry committee's testimony. Further, P.W. 3 (Md. Siddik Ali) testified regarding the formation of the inquiry committee and its findings. In his examination-in-chief on recall, he stated that:

“উক্ত তদন্ত কমিটির আমি সভাপতি ছিলাম। ২৫.০৪.২০১১ ইং তারিখ হইতে ৩০.০৫.২০১১ ইং তারিখ পর্যন্ত তদন্ত করিয়া ৩১.০৫.২০১১ ইং তারিখে তদন্ত প্রতিবেদন দাখিল করি। এই সেই তদন্ত প্রতিবেদন ইহাতে এই আমার স্বাক্ষর প্রদশনী ৫/২। অদ্য আদালতে মূল তদন্ত প্রতিবেদন দাখিল করিলাম। তদন্তকালে জানা যায় জনাব হামিদুর রহমান ট্রেজারার ব্রাহ্মণবাড়িয়া প্রধান ডাকঘর ১৭.০৪.২০১১ ইং তারিখ কসবা উপজেলায় ডাক যোগে ১৫ হাজার টাকা, ১৮.০৪.২০১১ ইং তারিখ কুটি সাব অফিসে ৫,০০০/- টাকা, পত্তন ইউএস ও ৫,০০০/- টাকা, গঙ্গাসাগর সাব পোস্ট অফিসে ২,০০০/- টাকা কোন প্রকার চাহিদা পত্র ছাড়াই জাল রাজস্ব টিকেট সরবরাহ করে।” Furthermore, perusing the Stock register, Treasurer register, Cash book

register (Exhibit No. 2), & enquiry report (Exhibit No. 5), it is clear that--

<b>Date</b>	<b>Treasury Stamp Stock register</b>	<b>Treasury Cash book register</b>	<b>Daily Stamp Sale Register</b>
13.04.2011	95,297/-		
17.04.2011	64,297/-	46000/- (46,000- 31,000) =15,000	31,000/-
	(95,297-64,297)= 31,000/-		
18.04.2011	55,297/- (64,297-55,297) =9,000	9,000/-	19000/- (19000- 9000) =10000
19.04.2011	40,297/- (55,297-40,297) =15000	20,000/- (20,000-15,000) = 5000	

On 17.04.2011 at the start of the day, the stock of revenue stamps (including 1/- and 4/- denominations) was BDT 95,297/-. By the end of the day, the stock was BDT 64,297/-. This indicates that a total of BDT 31,000/- worth of stamps was supplied to various offices and counters. Despite the stock register showing a supply of BDT 31,000/-, the Treasury Cash Book recorded a supply of BDT 15,000/-to the Kasba Upazila Post Office alone, with a total supply (including counters) of BDT 46,000/-. Moreover, in the Daily Stamp Sale Register, appellant Hamidur Rahman intentionally wrote BDT 31,000/- in the total column instead of the actual BDT 46,000/-. This

allowed him to supply BDT 15,000/- in extra revenue stamps that were not part of the official stock.

Further, the Noting dated 18.04.2011 of the stock register showed a reduction from BDT 64,297/- to BDT 55,297/-, indicating a supply of BDT 9,000/-. While the Treasury Cash Book reflected this BDT 9,000/-, the Daily Stamp Sale Register showed a total supply of BDT 19,000/-. Again, the Treasurer recorded BDT 9,000/- in the total column instead of BDT 19,000/-, effectively supplying an additional BDT 10,000/- without official stock. From the note dated 19.04.2011 in the stock register, it transpires that a reduction of BDT 15,000/- (from BDT 55,297/- to BDT 40,297/-) has been recorded. However, the Treasury Cash Book and Daily Stamp Sale Register showed a total of BDT 20,000/-. The Treasurer recorded BDT 15,000/- instead of BDT 20,000/-, supplying an extra BDT 5,000/- without stock. Moreover, P.W. 9 (Azhar Uddin Ahmed, Upazila Postmaster, Kasba) testified about the appellant's reaction to the discovery of the forged stamps, demonstrating his awareness of guilt and use of his official position to control the situation that "ব্রাহ্মণবাড়ীয়া ট্রেজারারও আসামী হামিদুর রহমান আমাকে বলে যে, টিকেটগুলো সে

বদলে দিবে। কোথাও আমি অভিযোগ না জানাই। তিনি ২৪-৪-১১ ইং তাং বদলে দিবে বলে।"

In view of the above, it is well-founded that the appellant Abdur Rahman misappropriated the government fund so entrusted to him and, as such, it is an offense within the mischief of section 5(1)(c) of the Prevention of Corruption Act.

Further, whether the convict appellant committed the offense of 'Criminal breach of trust' as defined in section 405 of the Penal Code, as defined in section 5(2) of the Prevention of Corruption Act, 1947.

From the above fact, it may be inferred that the intention of such an act was dishonest indeed. The Act or conduct, and culpable inaction, of the appellant, and next, the activities carried out in dealing with the government fund, going beyond the terms of entrustment from the collective criminality and reciprocal connivance to effect misappropriation of the government fund or cause wrongful gain for his own. The appellant was a conscious part of a planned scheme to commit the criminal acts constituting the offense of Criminal breach of trust as defined in section 405 of the Penal Code.

The appellant took the plea of alibi, namely that the entrustment is not upon the appellant and that the revenue stamps were delivered from the DC office. There is nothing to show whether the revenue stamps received from the DC office are genuine, as there is no report, and the appellant has only delivered them to sub-post offices; hence, dominion has shifted to the master of the sub-post offices.

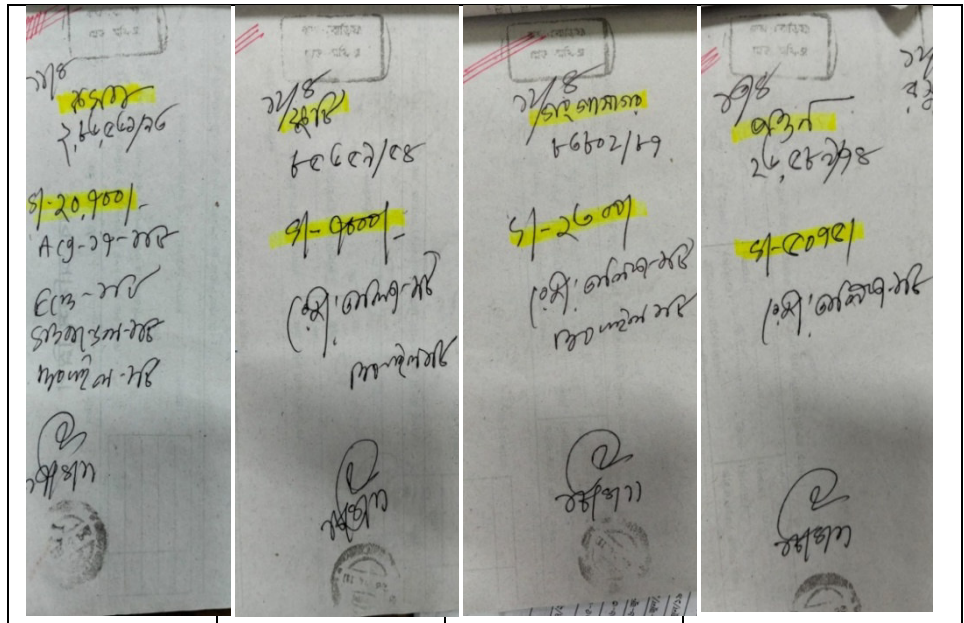
The plea of alibi taken by an accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has discharged its burden of proving the Commission of the crime by the accused beyond any reasonable doubt, it may not be necessary to go into whether the accused has succeeded in proving the defense of alibi.

In the instant case, we are critically analyzing the evidence on record, which shows that the appellant has entrustment and dominion over the property in the capacity of the Treasurer of the Head Post Office. The accused appellant, as the Treasurer, had primary and exclusive responsibility for the stamps and, abusing his

official capacity, used official "SO Slips" and "Account Bags" distributed forged revenue stamps to multiple sub-post offices. Moreover, using detection machines to verify the authenticity of revenue stamps recovered from the Kasba, Kuti, Gangasagar, and Pattan sub-post offices, it was found that a total of forged stamps, valued at Tk. 16,500/- out of Tk. 27,000/-, were supplied by the accused-appellant through his official channel. Moreover, perusing the stock register, Treasure stamp stock register, cash book register, and inquiry report, it is clear that the appellant replaced genuine revenue stamps with worthless counterfeits and intentionally wrote Tk. 31,000/- in the daily supply register/sale register. Tk. 46,000/- in the total column instead of the actual Tk. 46,000/-. Those allowed him to supply Tk. 15,000/- in revenue stamps that were not part of the official stock, and, in this regard, the prosecution, to prove its case, examined 14 witnesses. Of them, P.W. 9- Azhar Uddin Ahmed, Upazila Postmaster, Kasba testified that on 21.04.2011, a customer named Bahir Mia complained that the stamps purchased were forged. Crucially, he stated that on 24.04.2011, the appellant, Md. Hamidur Rahman approached him and

admitted the situation, stating, "he would replace the stamps," and explicitly requested this witness "not to report the matter to higher authorities". This testimony remained unchallenged during cross-examination, which constitutes an admission of guilt.

Further, the "SO Slip" and "Account Bag" System: Sub-offices (SO) received their inventory from the Head Office/ Treasurer. This transfer is recorded in "SO Slips" and transported in sealed "Account Bags." "So Slips" were signed and issued by the same person. {



}. Moreover, P.W- 7 (Sabina Yasmin) and P.W- 8 (Md. Alamgir) explicitly testified that they received these sealed bags from the appellant in his capacity as Treasurer.

Further, the Treasury Stamp Stock Register and the Daily Stamp Sale Register (Exhibit 2) show a precise correlation between the dates the appellant dispatched the stock (April 13-19, 2011) and the dates the forged stamps appeared at the four sub-offices. In this regard the learned Special Judge laid: “আসামী টিকেট সমূহ কসবা, কুটি, পত্তন ও গংগাসাগর সাবপোস্ট অফিসে সরবরাহ করে মর্মে প্রসিকিউশন পক্ষদাবী করেন। মামলা তদন্তকালে দৈনিক ডাকটিকেট সরবরাহ রেজিষ্টার জব্দ করা হয়। যাহা প্রদশনী (iii) চিহ্নিতহয়। উক্ত রেজিষ্টার দৃষ্টে ১৭.০৪.২০১১ইংতারিখ কসবা সাবপোস্ট অফিসে ১৫,০০০/- টাকার রাজস্ব টিকেট, এবং ১৮.০৪.২০১১ইং তারিখ কুটি, পত্তন, ও গংগাসাগর পোস্টঅফিসে যথাক্রমে ৫,০০০/-, ২,০০০/-, এবং ৫,০০০/- টাকার রাজস্ব টিকেট সরবরাহ করা হয়। কোষাধক্ষ্যের ক্যাশ বই প্রদশনী (ii) চিহ্নিতহয়। তাহাতে কসবায় ২০,৭০০ টাকা ১৫,০০০/- টাকার রাজস্ব টিকেট, ১৮.০৪.২০১১ইং তারিখ কুটিতে ৭,০০০/- টাকা, ৫,০০০/- টাকার রাজস্ব টিকেট, গংগাসাগর ২,৩০০/- টাকা এর মধ্যে ২,০০০/- টাকার রাজস্ব টিকেট এবং পত্তনে ৫,০৭৫/- টাকা এর মধ্যে ৫,০০০/- টাকার রাজস্ব টিকেট বিক্রির বিষয় লিপি আছে দেখা যায়। এই সকল রাজস্ব টিকেট সমূহ আসামী প্রেরন করেন তাহাও প্রমানীত হয়। সিলগালা করিয়া একই তারিখ ০৪টি স্থানে রাজস্ব টিকেট পাঠানো হয় এবং ০৪টি স্থান হইতে উদ্ধার কৃত টিকেট জাল পাওয়া যায়। এই অবস্থায় উপস্থাপিত দালিলিক ও মৌখিক সাক্ষ্য ও পারিপার্শ্বিক অবস্থা হইতে আসামী হামিদুর রহমান জাল টিকেট সরবরাহ করিয়া ছিলেন তাহা ধারাবাহিক সাক্ষ্য দ্বারা প্রমানীত হয়।”

The cardinal principle is that the prosecution need not prove the actual manner of misappropriation. Once entrustment is proved, it is for the accused to prove how

the property entrusted to him was dealt with, in view of section 405 of the Penal Code. This view gets support from the case of State of HP vs. Karanvir, reported in 2006 Criminal LJ, page 2917, laid:

"The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved as to how the property entrusted to him was dealt with in view of section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor."

Considering the above and the principles settled by the above judgments, it appears that the mens rea, i.e., the appellant's dishonest and fraudulent intention in committing the offense of misappropriation, is crystal clear; the appellant's role as Treasurer gave him control over stamp distribution. During the trial, the defense suggested, in cross-examination, that the appellant and the head postmaster were joint custodians of the stamps. This is a crucial judicial admission. In law, joint custody does not absolve an individual of liability; rather, the

prosecution has successfully proved the appellant's entrustment and dominion over the property. Therefore, the appellant's plea of alibi, taken without any valid or legal explanation, is not acceptable.

Mr. Hossain further submits that the learned Special Judge has failed to consider that the non-examination of the Investigation Officer creates a serious doubt about the prosecution case, and the prosecution case has totally failed. In his contention, he referred to the case of Munsurul Hossain -Vs- State, reported in LEX/BDHC/0279/1993, laid:-

"Further, it appears that the doctor who held the post-mortem examination of the deceased, the investigating officer, and other material witnesses, as mentioned above, have been withheld and their non-examination casts a serious doubt in the prosecution case." (para 44)

We fully agree with Mr. Hossain's submission and with the principle of the above-cited case that the non-examination of the Investigation Officer creates a serious doubt about the prosecution's case. In this case, 14 witnesses, including four Investigating Officers, were

examined. Among them, three Investigating Officers were examined as witnesses in the witness box, except one, Mr. Md. Humaion Kabir, who lastly submitted the charge sheet, was not examined in the witness box due to his death. All these witnesses uniformly and consistently supported the prosecution case, without any major contradictions in their evidence. We have also found that the learned Special Judge in this regard rightly held that Mr. Md. Humaion Kabir, the investigating officer in the case, could not be examined by the prosecution beyond its control due to his death.

Considering the above facts and circumstances, we do not find any reason to hold that the non-examination of the investigating officer has prejudiced the defense, although such non-examination in a criminal case is usually viewed with disapproval. Therefore, the submission of Mr. Hossain and the reference (LEX/BDHC/0279/199331) quoted above are not intelligently applied to the facts of the case.

Mr. Hossain contends that the prosecution has failed to establish that the seized revenue stamps are, in fact,

forged by examining them with an independent expert; therefore, the whole trial is vitiated.

It appears from the record that the prosecution has established that the stamps are counterfeit through a multilayered verification process. In this regard, P.W.1 deposed that the rest of the stamps were found forged by examining them through the machine at Brahamanbaria Head Post Office. P.W. 6 stated that a three-member inquiry committee used a detection machine to verify the authenticity of the revenue stamps recovered from the Kasba, Kuti, Gangasagar, and Pattan post offices. Moreover, the forged stamps, totaling Tk 16,500/- recovered out of Tk.27,000/- supplied by the appellant were seized and produced before the court as material evidence, and the learned Special Judge himself tested the stamps using a detection machine to verify their authenticity and found them to be counterfeit. Thus, the submission of Mr. Hossain has no substance.

Mr. Hossain further contented that the charge should have been split into two heads, one for Section 258/408 of the Penal Code and another for Section 5(2) of the Prevention of Corruption Act, 1947, as these are

distinct offences; the trial court failed to mention the particulars required under Sections 221 and 222 of the Code of Criminal Procedure, thereby causing prejudice to the appellant and in his contention refers to the case of Bashir Kha -Vs- state reportede in 50 DLR(1998) (HCD)199 laid that the failure of the trial in not mentioning the particulars which are required to be mentioned under sections 221 and 222 of the Code of Criminal Procedure, while framing the charge, caused prejudice to the accused, and because this omission deprived him from taking a proper defense, and as such, the error in the charge definitely occasioned failure of justice.

In reply, Mr. Tarofder submits that the charge against the appellant was both properly framed and effectively communicated. A plain reading of the charge reveals that the appellant was explicitly informed of the specific allegations that, while performing as Treasurer, he supplied forged revenue stamps, thereby committing offenses under the Penal Code and the Prevention of Corruption Act. Because the charge clearly detailed the nature of the offense, the period of occurrence, the specific

role of the accused, and the relevant statutory provisions, the essential ingredients of legal notice were fully satisfied. He further submits that the record further demonstrates that the appellant clearly understood the case he was required to meet. The charge was read over and explained to him, after which he pleaded not guilty and claimed the trial. Counsel represented him. The appellant actively participated throughout the proceedings, including the cross-examination of 14 (fourteen) prosecution witnesses. This conduct unmistakably shows that the appellant was fully aware of the accusations and was in no way misled during the trial process. The appellant did not raise any objection at the time of trial.

Admittedly, the law relating to charges is contained in Sections 221 to 240 of the Code of Criminal Procedure. The object of framing a charge is to enable an accused person to have a clear idea of what he is being tried for and the essential facts that he has to meet. However, the Code is a Code of Procedure and is designed to further the ends of justice, not to frustrate them by the introduction of endless technicalities. In this regard, the Constitution Bench (5 Judges) of the Supreme Court of India settled the

law regarding the effect of errors, omissions, or the total absence of a charge in a criminal trial in *Willie Slaney v. State of Madhya Pradesh* (AIR 1956 SC 116), where the appellant was charged under Section 302 read with Section 34 IPC (murder with common intention). His co-accused was acquitted. The appellant argued that since the element of common intention dropped out, he could not be convicted under Section 302 simpliciter without a separate charge for murder. **The Supreme Court of India explained the concept of "prejudice caused to the Accused" and "failure of justice"** in the following words:

*"Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.*

*If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to*

*him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."* (Para 6).

The Constitution Bench then examined whether the procedure followed by the court had caused actual injustice to the Accused and held that:

*"... Except where there is something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the Code will be so obvious that they will speak for themselves, for example, a refusal to explain the nature of the charge to them, and so forth. These go to the foundations of natural justice and would be struck down as illegal forthwith. It hardly matters whether this is because prejudice is then patent or because it is so abhorrent to well-established notions of natural justice that a trial of that kind is only a mockery of a trial and not of the kind envisaged by the laws of our land, because either way, they would be struck down at once. Other violations will not be so obvious that it may be*

*possible to show that, having regard to all that occurred, no prejudice was occasioned or that there was no reasonable probability of prejudice. In still another class of case, the matter may be so near the borderline that very slight evidence of a reasonable possibility of prejudice would swing the balance in favor of the Accused. (Para 14). Further laid*

*(Para -51)..... Every reasonable presumption must be made in favor of an Accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done, what we are concerned to see is whether the Accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. If all these elements are there and no prejudice is shown, the conviction must stand, whatever the irregularities, whether traceable to the charge or to a want of one."*

Finally, the Supreme Court of India held that, on the facts of the case, the appellant was not prejudiced because he clearly knew, from the evidence, the Section 342

examination, and his own defense that he was being accused of inflicting the fatal blow. However, on merits, the conviction was altered from Section 302 to Section 304 Part II IPC (culpable homicide not amounting to murder), and the sentence was reduced to five years. In the case, Kamil -Vs- State of Uttar Pradesh, AIR 2019 SC 45, the appellant Kamil was convicted under Section 302 IPC for murder. However, the formal charge framed against him was under Section 323/34 IPC (voluntarily causing hurt with common intention), not under Section 302. The appellant argued that this absence of a charge under Section 302 vitiated his conviction.

The Supreme Court of India reaffirmed the decision of *Willie Slaney vs. State of Madhya Pradesh*, AIR 1956 SC 116, and also explained the provisions of the charge as under:

*The following principles relating to Sections 212, 215, and 464 of the Code, relevant to this case, become evident from the said enunciations:*

*(i) The object of framing a charge is to enable an Accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet ...*

*(ii) The Accused is entitled to know with certainty and accuracy the exact nature of the charge against him, and unless he has such knowledge, his defense will be prejudiced. Where an accused is charged with having committed an offense against one person but, on the evidence led, he is convicted for committing an offense against another person, without a charge being framed in respect of it, the Accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge, and the Accused was aware of the error. Such knowledge can be inferred from the defense, that is, if the defense of the Accused showed that he was defending himself against the real and actual charge and not the erroneous charge.*

*(iii) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the Accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself." (Para 17).*

*Finally, the court concluded that the appellant knew the real charge against him by taking into account the charge-sheet, the order sheet of the trial court, and the section 313 CrPC examination. Furthermore, the appellant did not raise any objection at the earliest point in time, namely, the trial court and the first appellate court. The court held that no prejudice was caused to the appellant and no failure of justice was occasioned. The appeal was dismissed, and the conviction under Section 302 IPC was upheld.*

In *Debblera Sing -Vs- State of Punjab*, AIR 2013sc 840, the appellant Darbara Singh was convicted under Section 302 IPC (murder) and sentenced to life imprisonment. The prosecution's case was that the appellant, along with co-accused Kashmir Singh, attacked the deceased Mukhtiar Singh. The appellant hit the deceased on the head with a Kirpan (a sharp-edged weapon), while Kashmir Singh hit him on the chest. The appellant argued that he was never charged under Section 302 read with Section 34 IPC, and therefore, unless it was proved that the injury caused by him alone was sufficient to cause death, he ought not to have been convicted under Section 302 IPC simpliciter. The Supreme Court of India

elaborately discussed the principle of "prejudice" and "failure of justice" as follows:

*"The defect in framing of the charges must be so serious that it cannot be covered under Sections 464/465 Code of Criminal Procedure, which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed, or that there was some irregularity or omission or misjoinder of charges, unless the court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission, or irregularity in framing the relevant charges has led to a failure of justice, the court must have regard to whether an objection could have been raised at an earlier stage, during the proceedings, or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s)." (Para 14)*

*The 'failure of justice' is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must*

*endeavour to find the truth. There would be 'failure of justice'; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be over emphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under Indian Criminal Jurisprudence. 'Prejudice', is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to the investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under criminal jurisprudence, then the accused can seek benefit under the orders of the court." (Para 15, citing Rafiq Ahmed alias Rafi v. State of U.P., Rattiram and Ors v. State of M.P., and Bhimanna v. State of Karnataka)(Para 15).*

*Finally, the court rejected this argument because the appellant was unable to demonstrate what prejudice, if any, was caused*

*to him by the absence of a charge under Section 302/34 IPC. The appellant knew he had gone along with Kashmir Singh and Hira Singh with the intention to kill the deceased. The appellant caused a grievous injury to the head of the deceased, which is a vital part of the body.*

In Santosh Kumer –Vs- State (AIR 2011 SC 3402), the trial court framed charges against the accused under Sections 302, 109, 147, 148, and 149 of the Indian Penal Code. The High Court set aside the charge, holding that merely mentioning the sections of law without specifying the offense for each accused was likely to prejudice them.

The Supreme Court finally held that the charge contained sufficient particulars. After framing the charge, it was read and explained to the accused, who answered in the affirmative. The accused's cross-examination of the witness showed that he understood it, and there was no prejudice. The High Court's order was set aside, and the trial was directed to proceed.

In view of the above facts and circumstances and preponderant jurisprudence, it appears from the record of the instant case that the appellant clearly understood the case he was required to meet. The charge was read over

and explained to him, after which he pleaded not guilty and claimed the trial. He was represented by counsel. The appellant actively participated throughout the proceedings, including the cross-examination of 14 (fourteen) prosecution witnesses. This conduct unmistakably shows that the appellant was fully aware of the accusations and was in no way misled during the trial process. No objection was raised by the appellant at the time of trial. Applying the *Willie Slaney* test, as reaffirmed in the cases of *Kamil* and *Santosh Kumari*, it is evident that no prejudice or failure of justice occurred. The appellant has failed to demonstrate that:-

- a. any confusion regarding the charge
- b. any inability to defend himself
- c. any actual disability or detriment suffered.

On the contrary, the defense case and the nature of the cross-examinations indicate a complete awareness of the allegations regarding the entrustment and fraudulent supply of stamps. Consequently, no actual or probable prejudice has been established that would warrant an interference with the conviction. Moreover, the provisions of the Code of Criminal Procedure are fundamentally

procedural in nature and are designed to advance the cause of substantial justice, not to defeat it on the basis of mere technicalities (*Willie Slaney*). The true test, therefore, is not one of rigid or formal compliance with the structure of the charge, but whether, in substance, the accused was aware of the case he had to meet and was afforded a fair opportunity to defend himself. Unless a defect in the charge has occasioned a failure of justice, it cannot invalidate the conviction.

In the present case, the conduct of the appellant throughout the trial clearly demonstrates that he had a complete and accurate understanding of the allegations against him. This is evident from the pattern and substance of the cross-examination conducted on behalf of the defense, which directly addressed the core prosecution case regarding entrustment and the alleged fraudulent supply of revenue stamps. Such a focused and effective defense would not have been possible had there been any real confusion or misunderstanding as to the nature of the charge. Significantly, no objection to the charge was raised at the time of framing, during the trial, or before the trial court. As held in *Willie*

*Slaney and Darbara Singh* (supra), such failure to object strongly indicates that the accused understood the charge and was not misled by its form. Therefore, we are of the firm view that the charge in the present case substantially complied with all legal requirements and effectively conveyed the nature of the accusation. Since the appellant participated fully in the trial and suffered no prejudice, the conviction is not vitiated, and the outcome of the trial remains legally sound. Thus, the argument of Mr. Hossain has no substance.

On assessing evidence, materials on record, and rummaging facts and circumstances of the case and embarking on a survey on the legal debate involved in the case, we are of the considered view that the learned Special Judge duly applied his judicial mind to the facts and circumstances of the case and the evidence on record, and rightly convicted the accused-appellant. Thus, we find no merit in the appeal.

Resultantly, the appeal is dismissed.

The impugned judgment and order of conviction and sentence dated 21.11.2024, passed by the learned Special

Judge, Cumilla, in Special Case No. 01 of 2024, previously Special Case No. 06 of 2019, is hereby affirmed.

Send down the lower court records and a copy of the judgment to the court concerned at once.

.....  
(Md. Salim, J).

Kabir (BO)